



July 10, 2002

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2002-3741

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165440.

The Texas Department of Criminal Justice (the “department”) received a request for “the entire selection packet for the Counsel Substitute III position that was recently selected at the Gatesville Unit,” including applications, board questions, responses, selection justification, and other information pertaining to the selection of the position. You state that the department will release some of the requested information. The department claims that the remaining requested information is excepted from disclosure under sections 552.117 and 552.122 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted. We also have considered the comments that we received from the requestor. *See* Gov’t Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.122 of the Government Code excepts from required public disclosure “a test item developed by a . . . governmental body[.]” Gov’t Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term “test item” in section 552.122 includes “any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated,” but does not encompass evaluations of an employee’s overall job performance or suitability. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994).

The department seeks to withhold, as "test items," six interview questions and their recommended responses. You inform us that the department fills most vacant employee positions through a selection process that includes structured interviews in which the same specific questions are asked of all the applicants who reach the interview stage. You state that the questions are intended to display the technical expertise of the applicant and are devices by which the applicant's knowledge or ability in a particular area is evaluated. You explain that the department prefers to use similar questions repeatedly. You contend that the questions and answers at issue here measure the applicant's knowledge or ability with regard to management of staff that administers the counsel substitute program at the Gatesville Unit. You contend that public disclosure of these questions and answers might increase the cost and decrease the fairness and effectiveness of the selection process. Having considered your representations and reviewed the information in question, we find that interview questions 1, 2, and 4 constitute test items under section 552.122(b). We also find that the release of the answers to these three questions might reveal the questions themselves. Therefore, the department may withhold questions 1, 2, and 4 and their recommended responses under section 552.122 of the Government Code. The department has not demonstrated, however, that questions 3, 5, and 6 qualify as test items under section 552.122. Therefore, those questions and their recommended responses are not excepted from disclosure and must be released.

The department also raises section 552.117 of the Government Code. Section 552.117(3) excepts from public disclosure the home address, home telephone number, and social security number of an employee of the department, as well as information that reveals whether the employee has family members, regardless of whether the employee complies with section 552.1175. The department must withhold the social security numbers of employees other than the requestor under section 552.117(3). The requestor has a special right of access to her own social security number under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself).

In summary, the department may withhold interview questions 1, 2, and 4 and the corresponding recommended responses under section 552.122 of the Government Code. The department must withhold the social security numbers of employees other than the requestor under section 552.117(3). The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

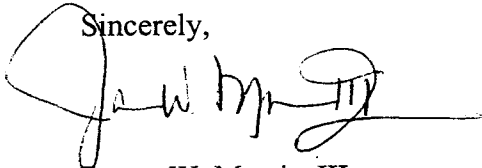
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 165440

Enc: Submitted documents

c: Ms. Erin Blanchard
324 Cedar Mountain Road
Gatesville, Texas 76528
(w/o enclosures)